

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 6274**

**BILL NUMBER:** HB 1618

**DATE PREPARED:** Mar 30, 2001

**BILL AMENDED:** Mar 29, 2001

**SUBJECT:** Blood and Breath Alcohol Concentrations.

**FISCAL ANALYST:** Mark Goodpaster

**PHONE NUMBER:** 232-9852

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill reduces from 0.10% to 0.08% the percentage of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute prima facie evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. It reduces the range of percentages of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute relevant evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated from at least 0.05% but less than 0.10% to at least 0.05% but less than 0.08%. It provides that operating a vehicle while intoxicated is a Class C misdemeanor and that operating a vehicle while intoxicated in a manner that endangers a person is a Class A misdemeanor. It makes conforming amendments.

**Effective Date:** July 1, 2001.

**Explanation of State Expenditures:** (Revised) Research suggests that lowering the percentage of alcohol concentration may increase the number of arrests made involving alcohol-related crimes, some of which are Class B, C and D felonies. The following are possible prison terms of these felonies:

<u>Felony</u>	<u>Prison Term</u>	<u>Avg Time Served</u>
Class B	6 to 20 years	3.5 years
Class C	2 to 8 years	1.9 years
Class D	6 mos. to 3 years	301 days

The following represents current DOC incarceration statistics for alcohol-related crimes. (Note: There have been no persons recently incarcerated for Class B felony- Driving While Intoxicated Resulting In Death.)

<u>Number of Individuals Incarcerated for Felony Crimes</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>
Class D OWI (Repeat Offense)	540	599	510	558	997
Class D OWI Resulting In Serious Bodily Injury	17	18	14	18	16
Class C OWI Resulting In Death	28	20	17	26	23

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures range from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Department of Toxicology: This Department is responsible for calibrating and monitoring the instruments that local law enforcement agencies use for measuring alcohol concentration. Staff indicate that a change from .10 to .08 for blood alcohol concentration may require the Department to replace the electronic chips in each of these instruments.

The Department reports that 270 breathalyzer instruments are used statewide. The costs of chips would include the purchase of a master chip at \$100 and 270 standard chips at \$12.50 each. This total cost would be \$3,474.

*Background:* The Department's budget is included in Indiana University's budget. The Department of Toxicology received the following appropriations for the past three years: FY99: \$633,861; FY00: \$656,056; FY01: \$679,606. The staff consists of the following: one Director, one Assistant Director, one Instructor/Trainer, one Lab supervisor, five Inspectors and Clerical support. For FY 2000, the unspent balance for the Department was \$1,223. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

**Explanation of State Revenues:** (Revised) Decreasing the intoxication level necessary for prosecution may affect crimes chargeable with Class C infractions and Class A and C misdemeanors, as well as B, C and D felony crimes. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500 which is deposited in the state General Fund. The maximum fine for a Class A misdemeanor is \$5,000 while the maximum fine for a Class C misdemeanor is \$500. The maximum fine for a Class B, C or D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, county, or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

If the criminal action or infraction involves a traffic violation, including this proposed offense, a highway work zone fee of either 50 cents or \$25.50 is assessed. The court may also impose an alcohol and drug counter measures fee of \$200. Revenue collected is deposited in the State User Fee Fund.

**Effect on Federal Funding:** This bill could impact federal transportation funding that Indiana is projected to receive as well as eligibility for impaired driving enforcement funds. First, if the .08 standard is not instituted by 2003, Indiana will lose 2% of its DOT dollars as a penalty in 2004, 4% in 2005, 6% in 2006, and 8% in 2007.

For Indiana, the amount to be lost in 2004 is not known since current federal funding laws do not extend beyond 2003. During the current funding year, Indiana received \$700 M in federal funding. Consequently, at today's funding level, the 2% penalty in 2004 would be \$14 M.

These federal funds could be reimbursed to Indiana if legislation is passed by 2007, but the funds are not recoverable if .08 legislation is not passed before 2007.

Indiana would also qualify for additional funds for highway safety enforcement. The following are estimates of the past and future federal safety grants which Indiana has either forfeited or will forfeit if the .08 legislation is not instituted.

<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>
\$3.1 M	\$3.0 M	\$3.5 M	\$4.3 M	\$4.9 M	\$5.4 M

**Explanation of Local Expenditures:** (Revised) A Class A misdemeanor is punishable by up to one year in jail while a Class C misdemeanor is punishable by up to 60 days in jail. If more defendants are detained in county jails due to misdemeanors or prior to their felony court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** (Revised) Provision A: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Department of Correction; Department of Transportation.

**Local Agencies Affected:** Trial courts; local law enforcement agencies; prosecuting attorneys offices.

**Information Sources:** Indiana Sheriffs Association; Department of Correction; Criminal Justice Institute; Bureau of Motor Vehicles.